115

(2)

Supreme Court, U.S.
FILED
OCT 31 2008
OFFICE OF THE CLERK

Case No. 07-1587

IN THE

Supreme Court of the United States

In Re,

Verlyn E. Richards, Pro Se

V.

M.S.P.B Respondent

And/ Or

Department of the Army

Rehearing Petition

To

Petition for an Extraordinary Writ

In the

Nature of Mandamus

Or,

In the Alternative,

On Petition for a Writ of Certiorari

To the

United States Court of Appeals

For the Federal Circuit,

And/ Or

United States Court of Appeals

For the Sixth Circuit.

PETITION FOR A WRIT OF CERTIORARI

Verlyn Richards,

23599 Riverside Drive

Southfield, MI 48033

(248) 809 2014; (810) 8746076

PETITION TO Chief Justice, JOHN G. ROBERTS, JR FOR REHEARING OF ORDER DENYING PETITION FOR A WRIT OF CERTIORARI

Table of Contents.....Page

1. Denial Constitutional Due Process Right to Seek Reasonable Redress in the appellate courts, and this Court. ...4
    - Direct Nexus, Agency's Illegal Discriminatory / Retaliatory Acts, Protected Activity, Intervening life threatening Illnesses, Pro Se Status 4
2. National interest and Importance...6
    - Fraud Upon the Court...6
    - Agency's attorneys **from multiple offices conspired and** repetitively committed fraud upon the courts
    - Subverted the integrity of **four judicial bodies**...7
3. Fraud On The District Court...8
4. Seven 'proxies repetitively committed perjury...8
5. Court's decision will significantly deter discrimination in the private and public sector...9

6. Building Blocks to Trigger an illegal reinvestigation of Richards' security clearance:..10
7. Granting the writ will aid this court's appellate jurisdiction:...11
8. The court must clarify what deference, if any the Federal Circuit was obligated to give sister circuits...11.
9. The Court must revisit, overturn, or distinguish *Department of the Navy v. Egan*,...10
10. Federal Circuit adopted the AJ's misinterpretation of Executive Order's (EO's) boiler plate provision, and failed to examine the EOs and implementing regulations, ...14
11. AUSAs abused the discovery process and violated security clearance investigative regulations) by subpoenaing casinos for preadjudicated information ,
12. Szymanski's 'buck slip establishes a conspiracy.
13. Sixth Circuit failed to Respond To Motions to add new issues and after acquired evidence...16
14. Merits..15
15. Certificate Of Compliance, Grounds for Rehearing...16
16. Certificate Of Compliance,, Word Count....17

TABLE OF AUTHORITIES

1. *Armstrong v. United States*, 80 U.S. 154, 156(1871).
2. *Brady v. Maryland*, 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963)
3. Braun, 50 F.3d at 1007-08
4. *Demjanjuk v. Petrovsky*, 10 F. 3d 338, (6th Cir. 1999).
5. *Department of Defense Investigative Service; Directorate for Industrial Security Clearance Review* (10th Cir, 2002); *Hill v. Department of Air Force*, 844 F.2d 1407, 1412 (10th Cir. 1988)
6. *Department of the Navy v. Egan*, 484 U.S. 518 (Fruehauf 1988),
7. Greene v. McElroy, 360 U.S. 474, 493 n.22 (1959).
8. Heining v. Gen. Servs. Admin., 68 M.S.P.R. 513, 521 (1995).
9. *Perlman v United States*, 490 F.3d 928, 933 (Ct. Cl. 1974)
10. *Pennsylvania State Police v. Suders* (Docket No. 03-95) (Sup Ct,)
11. Scharf, 710 F.2d at 1574
12. *Terban v. Dep't of Energy*, 216 F.3d 1021, 1024 (Fed. Cir)
13. Webster v. Doe 486 U.S. at 603.

Richards prays that Chief Justice Roberts suspend the order denying certiorari and present Richards' reconsideration petition to the Court. There is reasonable likelihood of the Court's changing its position and granting certiorari but for exceptional, extraordinary, unique, and compelling intervening circumstances of a substantial and controlling effect and other substantial grounds not previously presented. If the Court grants the petition, Richards believes she will be able to alleviate concerns the Court may have with a pro se petitioner by influencing a law office, which practices in this Court to prepare the brief, joint appendix, and participate in oral argument.

I. **Direct Nexus, Agency's Illegal Discriminatory / Retaliatory Acts, Protected Activity, Intervening life threatening Illnesses, Pro Se Status**

1) The agency denied Richards' constitutional due process rights to seek reasonable redress in the appellate courts, and this Court.
2) A serious intervening illness (diagnosed September 26, 2008, deep vein thrombosis and pulmonary embolism precluded Richards from submitting a corrected supplemental brief, and Appendix Part (C), critical to the questions presented, which she mistakenly submitted as a motion, and which the Court was expecting before the Court reconvened October.
3) Petitioners' supplemental brief appendix (PSA) Part (C), P.? impeaches Federal Circuit/M.S.P.B/ AJ findings and conspirators, proxies (TACOM CG, Thompson (2003-2004), ARep, AUSAs', OTJAG attorneys, Interim DCG, SES Mehney; AUSAs' expert

psychiatrist /psychologist witnesses' (Drs. Benedek and Clark), and psychiatrist, Dr. Saul Forman material false representations /reports by comparing them with the record. **PA, P. 58.**

4) Richards' serious illnesses, which medical professionals notified the agency since 1999 resulted from what she believes are the agency's illegal acts directed at her, significantly reduced her sight, concentration, ability staying awake.
5) The agency targeted her finances 2003-2004 by illegally refusing to loan sick leave and in 2004 suspending her without pay until she was forced to retire 2005. . She expended retirement savings on lawyer fees and court costs over $200,000 by 2004.

National Interest and Importance:

National Federal Employees' Women Organization (FEW) supports this case __ donated money, collected contributions, and held a raffle at its 2003 national meeting.

. The case shows like none other the extent that fraud is successfully being committed in lower courts by government attorneys and lower courts' naivety / vulnerability not only to familiar officers of the court with developed expertise in crossing the line into 'dishonesty. Testimony and documents / regulations not prepared for litigation establish the fraud and the conspiracy among defendant proxies, attorneys, expert witnesses, and investigators to commit it. It will be a sad day for this country if the perpetrators of the fraud are left free to show others how to do it

3. The impact of the Court's decision will significantly deter discrimination in the private and public sector. A powerful agency's proxies, responsible for our soldiers, conspired with attorney agents from multiple offices, investigators (DOD OCI)(CCF), and expert witnesses and repetitively commit fraud upon the courts and Richards to,
    a. Hide those proxies' participation in illegal discrimination and retaliation in reprisal against their SES Chief Counsel's protected protests and her express duty to report them if she believes they are or are about to violate law;
    b. Reduce front pay;
    c. Remove Richards from employment by illegally triggering a reinvestigation of her security clearance.

4. TACOM CGs, MG Andrews (1996-997), LTG Beauchamp (1997-1999), Chiefs of Staff Kirby (1996-1997) and Pankey (1997-1999) Deputy to the CGs, SES Newberry, AMC Command Counsel (AMCCC) SES Korte, Chief of Business Planning, Aaron Goldsmith repetitively committed perjury during the "neutral' 2000 administrative Fact-finding Conference (FFC) and 2003-2004 depositions. Schmidt prepared them for the FFC and violated EEOC MD 10.

5. Time is of the essence for the Court to send a strong message nation-wide that fraud upon the courts will not be tolerated.

> "[T]ampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a

wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated . . . The public welfare demands [it]." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246, 61 USPQ 241, 245 (1944).

6. The agency actions will shock the conscience of the public, congress, and the courts. .The variety of fraud committed is so inextricably entwined, pervasive that it must be examined together and no other court is able to adequately examine it.

7. Attorneys' fraud subverted the integrity of **four judicial bodies**, the MSPB, Federal Circuit, district court (DC), and Sixth Circuit, such that the judicial machinery ran 'a-muck. Appendix Part B. (verbatim comparisons, impeaching AUSAs' material false representations, **agency proxies' perjury** and the Sixth Circuit / district court(DC) findings.

> "As an officer of the court, every attorney has a duty to be completely honest in conducting litigation. While an attorney should represent his client with singular loyalty, that loyalty obviously does not demand that he Act dishonestly or fraudulently; on the contrary his loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court, and when he departs from that standard in the conduct of a case he perpetrates fraud upon a court. "

a) AUSAs and OTJAG attorneys committed fraud on the district court (DC) October 16, 2004 SJ oral arguments reflected in SJ Hearing transcripts (SJHTs).

b) The Sixth Circuit adopted that fraud as true, failed to review the record, and perpetrated the fraud the "Appendix Part A, 'Opinions Below,' **PA (A), P.?**

c) The MSPB AJ, Board, and Federal Circuit adopted AUSAs' material false representations and the AReps. AJ committed harmful error

ID, "[Richards] alleges the agency subjected her to harmful procedural error by allowing participants in her civil suit to propose and decide her suspension. **"[Richards] named neither Mr. Mehney nor General Thompson as defendants in her civil lawsuit,** which was dismissed on the agency's Motion for Summary Judgment. See Docket No. CH0752 -05-0128-1-1: Agency File, Tab 4(1);

> "[Richards] only procedural allegation was that the agency violated Executive Order No. 12968, Access to Classified Information" by allowing Daniel G. Mehney to propose her suspension and Major General Thompson to decide it **does not support an actionable claim." Compare, involuntary retirement affirmative defenses, ¶ 4(a-i). PA, P.**; and (2) [that allegation] does not support an actionable claim. "[Richards] alleges the agency was not the appropriate authority to investigate Richards for security clearance purposes... the agency subjected her to harmful procedural error by allowing participants in her civil suit to propose and decide her suspension...CG Thompson was improperly designated the official "Requester" and "Deciding Authority" and SES Mehney, "Proposing Official... "[**Compare,**

"CG Thompson and Mehney were named in the DC action and the ARep knew it. Documents given to ARep in response to interrogatories/ production of documents include excerpt, of Richards' SJ Hearing Declaration (RDecl)**,¶s 599-644** (CG Thompson) incorporated in App. Statement of Material Facts, ¶ 1, Tab E; Burt affidavit, Exclusion from Source Selection, improper seating, Mehney bypassing Richards ...screaming at her... Tab P (11), Pg 33-34. Not only did Richards raise allegations that rise to specific claims of duress. See AD(s) (b) to (g-h), CG Thompson was the major 'player' in those 2003-2004 adverse actions, building blocks to trigger an illegal reinvestigation of Richards' security clearance:, which the AJ found did not rise to a specific claim of duress. AUSAs, OTJAGs, Szymanski, and CG Thompson schemed to create another basis for CG Thompson, the official "Requester, to illegally trigger and support a reinvestigation of Richards' security clearance by targeting illnesses and finances, 2003-2004 to create false scenarios of misconduct 'abuse of sick leave' as another basis to support revocation of her clearance and commit fraud upon the courts. ['Black humor' considering the medical test results through 2003- 2006-2008.]. Forty paragraphs in Richards SJ affidavit addressed these acts, the building blocks to trigger an illegal reinvestigation of Richards' security clearance, which standing alone would establish a hostile environment.

i. Denied a training class,

ii. Refused to loan sick leave
iii. Public humiliation by removing her from ongoing attorney selection (violation,)
iv. False scenarios of abusive sick leave,
v. Reprimanded for abuse of sick lave
vi. Downgraded appraisal tied to abusive sick leave,
vii. Violated the FMLA leave without pay, which Dr. Kirsch certified May 2004 due to unconscious episodes,
viii. No income after suspension, October 2004; Home, to foreclosure 2005.

Compare, ARep states,
"He [CG Thompson] found nothing to lead him to conclude the action had been orchestrated by the department of justice or that he and Mr. Mehney had to recluse themselves from the case." ARep's response to involuntary retirement appeal (ARR) **¶ 8**. [ARep also told the AJ there were no regulations that required them to recluse themselves. Richards told her she had not looked for them, yet].

d) AUSAs and OTJAG attorneys played a lead role in removing Richards from employment by abusing the discovery process and violated security clearance investigative regulations by subpoenaing casinos for illegal preadjudicated information. AUSAs via OTJAG Krause passed the AUSAs, Benedek-Clark psychiatric evaluation through the system to AMC security, TACOM security, CCF and Forman.

III. **Granting the writ will aid this court's appellate jurisdiction:**

1. The case involves constitutional, civil rights, criminal, and a significant number of recurring issues of substantial importance intertwined with fraud upon the courts.

2. The court must extend the principles of *Brady* v. *Maryland*, 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963) to civil fraud upon the court. Fraud upon the court is fraud upon the court. It must address the split in the circuits as to whether materiality is a question of law, *and whether a* "plan or scheme" must exist in order to find fraud [*353] on the court, "Although there are cases holding that a "plan or scheme" must exist in order to find fraud [*353] on the court, we agree with Judge Wiseman that a scheme, based on a subjective intent to commit fraud, is not required..." "Reckless disregard for the truth is sufficient. " *Demjanjuk* v. *Petrovsky*, 10 F. 3d 338, (6th Cir. 1999).

3. The Court must revisit, overturn, or distinguish *Department of the Navy* v. *Egan*, 484 U.S. 518 (1988). The case shows that "barbarians are at the gate." The Court is the last bastion to protect national security. As courts have repetitively stated high-level proxies set the example for those below. In Egan there was no need to address, when an agency through its proxies retaliates in reprisal for constitutionally protected protests fraud upon the court was not an issue; agency proxies were not involved. Deference must not be given to an

agency "in the interest of national security, when those proxies, many who hold top secret security clearances knew or should have know they or others were violating security clearance procedural regulations or criminal statutes (1001).

4. It is imperative to all federal employees, and those who contract with them and require a clearance that the Court examine and clarify Executive Orders (EOs) 12968 and 13087's boiler plate provision, which the court misinterpreted, and thus, failed to examine the EOs and implementing regulations (harmful error). E.g., DODD 5200.6 reinvestigation directives, (applicable in the instant case, e. g., when proxies are named participants in the discrimination and also named proposing and deciding official in a security clearance investigation. The court failed to see that the conspirators are all agency employees for purpose of security clearance regulations and must comply, had conflicting interests, and failed to refrain from involvement. and violated the regulations by choosing two of the agency's proxies, named participants in Richards' discrimination case, one as the proposing official (Mehney) and the other as the official "Requester" and "Deciding Authority," (CG Thompson, Richards' immediate supervisor, initial and senior rater), who must be selected based on neutrality / no potential for bias. DODD 5200.6, Definitions (e) and DODD 5200.2-,"***shall*** refrain from accepting any case in which the investigator knows of circumstances that might [not 'will' but 'might'] adversely affect his / her fairness, impartiality, or objectivity.'

5. The Court must clarify the obligation of the Federal Circuit to defer to a sister circuit's judgment included in the agency's reply (invalid here). It adopted the AJ's view that there was no need to examine Richards' allegations of agency discrimination, retaliation, and harassment in the first instance for the limited purpose of looking for coercion, duress, misinformation /misrepresentation, *Terban v. Dep't of Energy*, 216 F.3d 1021, 1024 (Fed. Cir) (*Perlman v United States*, 490 F.3d 928, 933 (Ct. Cl. 1974) by, applying the ARep's misrepresented res judicata approach to Richards' discrimination issues, and ARep's response to PFR.¶ 12,

   "Virtually all the incidents referenced in the subject appeal (6th Circuit), which occurred up until August 2004 are included in that federal district court action. Res Judicata applies to Richards' discrimination claims."

6. The Court must extend the principles of *Harris, Faragher, and Pennsylvania State Police v. Suders* (Docket No. 03-95) (Sup Ct,) and Morgan to tailor the test for involuntary retirement in the federal circuit, when Proxies are the perpetrators. The Court must find that a reasonable **woman** in Richards' position would find lack of free choice coercion and duress, when agency proxies, the decision-makers, are participants, and the acts which seriously interfered and precluded Richards' performance of duties 1996 to present violated agency regulations, and establish involuntary retirement. "[F]reedom of choice [is] the guiding principle [in an involuntariness determination]." *Scharf*, 710 F.2d at 1574; *Braun*, 50 F.3d at 1007-08 ("To determine whether a resignation or retirement is voluntary, a court must

examine 'the surrounding circumstances to test the ability of the employee to exercise free choice.'" (citations omitted)). The first *Fruehauf* element is inapplicable to most constructive discharge cases where no adverse action is currently pending; nevertheless, the appellant may still be coerced into an involuntary resignation based on a lack of free choice. *Braun*, 50 F.3d at 1008; *Heining v. Gen. Servs. Admin.*, 68 M.S.P.R. 513, 521 (1995).

7. The Court must clarify that harassment based on sex does not require something be said about Richards' sex. *Haugerud v. Amery School District* (7th Circuit 2001) *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 66, 106 S. Ct. 2399, 91 L. Ed. 2d 49 (1986)), cert. denied, 528 U.S. 988, 120 S. Ct. 450, 145 L. Ed.2d 367 (1999). *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S.75, 80, 118 S. Ct. 998, 140 L. Ed. 2d 201 (1998) (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 25, 114 S. Ct. 367, Ed. 2d 295 (1993) (Ginsburg, J. concurring)). Harassment is not limited to acts of sexual desire, but rather is a broad term which "encompasses all forms of conduct that unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment." see *Smith v. Sheahan*, 189 F.3d 529, 534 (7th Cir.1999); Shepherd v. Slater Steels Corp., 168 F.3d 998, 1008 (7th Cir. 1999) (quoting *Oncale*, 523 U.S. at 80).

IV. **Merits:** This is a 'clean' case.

1. It is impossible to find legitimate reasons for the agency's conduct, when it violated multiple regulations.

2. Discriminatory motive is shown through direct evidence. Proxies were predisposed to discriminate against Richards and 'acted on it.; stereotypical views of a women in her position demonstrated by their own testimony; and pretext (perjury); disparate treatment advantaging men similarly situated, who were tasked with the same task, to integrate incoming off-site employees into their organizations (BRAC), who were advantaged in material ways that Richards was disadvantaged by giving them the management tools every manager expects e.g. supervision /evaluation of those employees (first step in the integration); control of funding for salaries, promotions, awards, travel and training and manpower spaces __Table of Distribution and Allowances (TDA)(second step); and the third step business processes crossing cites to create a seamless command, one TACOM without regard to geography. Protected protests shortly followed with retaliation and harassment based on sex and protected activity, Even if the decision maker had authority to make the decisions, which they did not, when pretext (dishonesty) is established, it suffices to show coercion, and duress just as it suffices to show discriminatory motive and invidious discrimination (*Reeves)*.

Respectfully Submitted,

Verlyn E. Richards, Pro SE.

CERTIFICATE OF COMPLIANCE, GROUNDS FOR REHEARING

This petition is presented in good faith and not for delay. It complies with the Court's requirement that the grounds stated are limited to intervening circumstances of a substantial or controlling effect and other substantial grounds not previously presented.

Verlyn E. Richards, Pro SE.
Date: November20, 2008

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a) (7) (B).

1. The brief contains 2, 701 words, excluding parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2 This brief complies with the typeface requirements of Federal Rule of

Appellate Procedure 32(a) (5) and the type style requirements of Federal Rule of Appellate Procedure 32(a) (6).

3. The brief has been prepared in a proportionally spaced typeface using Microsoft Word, 2007, 12 point, Century Gothic

---

Verlyn Richards Pro Se
Petitioner
Date: November20, 2008